

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	§	
Anurag Gupta et al.	§	Group Art Unit: 1795
	§	
Serial No.: 10/694,565	§	Confirmation No.: 2433
	§	
Filed: October 27, 2003	§	Examiner: Merklings, Matthew J.
	§	
For: Method and Apparatus for	§	Atty. Docket: CPCM:0010/FLE/RAR/FAR
Controlling Polyolefin Reactor	§	210546
Temperature	§	

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July 30, 2008	/Floron C. Faries/
Date	Floron C. Faries

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

In light of the following remarks, Appellant respectfully requests review of the Final Rejection in the above-identified application. This Request is being filed with a Notice of Appeal. No amendments are being filed with this Request. In the Final Office Action, the Examiner rejected claims 1-10, 12, 13, 47-69, and 71-78. In view of the following remarks, Appellants respectfully request reconsideration and allowance of all pending claims.

In accordance with 37 C.F.R. § 1.136, Applicant hereby requests a three-month extension of time from April 30, 2008 to July 30, 2008. The Commissioner is authorized to charge the requisite fee of \$510.00 for the Notice of Appeal, the fee of \$1050.00 for the three month extension of time, and any additional fees which may be required, to the credit card listed provided during electronic filing. However, if for any reason this charge fails, the Commissioner is authorized to charge Deposit Account No. 06-1315; Order No. CPCM:0010/FLE(210546).

**Legal Error of Claim Rejections under 35 U.S.C. § 103(a)**

In the Final Office Action, the Examiner rejected all of the independent claims and several dependent claims under 35 U.S.C. § 103(a) as being unpatentable over Hess et al., U.S. Patent 6,235,852 (hereinafter “Hess”) in view of Freisinger et al., U.S. Publication No. 2002/0053652 (hereinafter “Freisinger”). The Examiner rejected the remaining dependent claims as being unpatentable over Hess and Freisinger in further view of Johnson et al., U.S. Patent No. 5,697,436 (hereinafter “Johnson”) or Wu et al., U.S. Patent No. 6,252,016 (hereinafter “Wu”). Applicants respectfully traverse these rejections.

***Legal Precedent***

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). To establish a *prima facie* case, the Examiner must show that the combination includes *all* of the claimed elements, *and* also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). The Examiner must provide objective evidence, rather than subjective belief and unknown authority, of the requisite motivation or suggestion to combine or modify the cited references. *In re Lee*, 61 U.S.P.Q.2d. 1430 (Fed. Cir. 2002). Further, the Supreme Court has recently stated that the obviousness analysis should be explicit. *See KSR Int’l Co. v. Teleflex, Inc.*, 82 U.S.P.Q.2d 1385 (U.S. 2007) (“[R]ejections based on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) (quoting *In re Kahn*, 441 F.3d 977,988 (Fed. Cir. 2006)).

***Deficiencies of the Rejections***

The present independent claims recite a valve having a *bilinear* flow characteristic. Contrary to the Examiner’s assertion, the secondary reference Freisinger does *not* disclose a valve having a bilinear flow characteristic, expressly or inherently. *See* Final Office Action,

page 5. Further, even assuming Freisinger discloses a valve having a trilinear flow characteristic (which Applicants do not concede), the reference, again, does *not* disclose a bilinear flow characteristic, expressly or inherently. As an analogy, a three-legged animal is structurally different and functions differently than a two-legged animal.

Contrary to legal precedent, the Examiner has ignored fundamental tenets of claim construction and with regard to the failed attempt to establish a *prima facie* case of obviousness. *See Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985) (explaining that to establish a *prima facie* case of obviousness, the Examiner must show that the combination includes *all* of the claimed elements). It should be emphasized, contrary to the Examiner's contention, that the physical *structure* of a valve will be different for the same type of valve having a bilinear flow characteristic versus having a trilinear flow characteristic. *See* Advisory Action. To be sure, the valve trim and associated valve configuration would be physically different for a valve having a bilinear flow characteristic versus a trilinear flow characteristic. In addition, a valve with a trilinear flow characteristic would clearly provide for a different flow behavior of the manipulated fluid than if the valve possessed a bilinear flow characteristic. Applicants believe strongly all claims to be patentable over the cited combinations.

Further, it should be noted there is no appropriate reason to modify Hess to incorporate a bilinear flow characteristic. *See KSR Int'l Co. v. Teleflex, Inc.*, 82 U.S.P.Q.2d 1385 (U.S. 2007). For example, Hess makes no mention of issues with low turn-down with the coolant valves. Thus, for this additional reason, the present claims are patentable over the cited combinations.

Furthermore, it should also be stressed that the secondary references cited by the Examiner do not obviate the deficiencies of Hess and Freisinger discussed above. For these reasons, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103.

Lastly, it should be emphasized that while the dependent claims are patentable because of their dependency on an allowable base claim, the dependent claims are allowable because of the subject matter they separately recited. *See, e.g.*, dependent claims 2-5.

**Conclusion**

Appellants respectfully submit that all pending claims should be in condition for allowance. However, as indicated, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

Date: July 30, 2008

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